

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GEORGE L. RIOSECO, individually and derivatively on
behalf of MANHATTAN PARTNERS II, L.P., and
S.W.A.N. PARTNERS, L.P., EVA RIOSECO and
NILDA CRUZ,

Plaintiffs,

No. 10 Civ. 05871 (CS)

ECF Case

-against-

JOHN GABELLI, INC., ROBIN PREVER, INC.,
CAROL A. GABELLI, INC., DANIEL L. LOFRESE,
INC. and GAMCO ASSET MANAGEMENT, INC.,

Defendants,

Jury Trial Demanded

-and-

MANHATTAN PARTNERS II, L.P., and S.W.A.N.
PARTNERS, L.P.,

Nominal Defendants.
-----X

STIPULATION AND ~~PROPOSED~~ ORDER

WHEREAS on or about November 12, 2009, plaintiffs filed a complaint in this Court entitled
George L. Rioseco, Eva Rioseco and Nilda Cruz v. GAMCO Asset Management, Inc., No. 09 Civ.
9396 (CS);

WHEREAS on or about April 1, 2010, plaintiffs filed an amended complaint in this Court;

WHEREAS by letter dated April 29, 2010, defendant GAMCO Asset Management, Inc.
requested a conference on its anticipated motion to dismiss the federal action;

WHEREAS the Court granted this request, and set a conference date for May 6, 2010;

WHEREAS on or about May 3, 2010, plaintiffs dismissed the federal complaint pursuant to
Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure;

WHEREAS on or about July 9, 2010, plaintiffs served on at least some named defendants an action filed in New York State Supreme Court, entitled *George L. Rioseco, et al, v. John Gabelli, Inc., et al*, No. 15862/10.

WHEREAS on or about August 4, 2010, defendants JOHN GABELLI, INC., CAROL A. GABELLI, INC., DANIEL L. LOFRESE, INC., MANHATTAN PARTNERS II, L.P., and S.W.A.N. PARTNERS, L.P., later joined by defendant ROBIN PREVER, INC. (together the "removing defendants") served and filed a Notice of Removal of the above state court action to federal court, as the instant action under No. 10 Civ. 05871;

WHEREAS on or about August 5, 2010, the Hon. Cathy Seibel, U.S.D.J., accepted the matter as a related matter to *George L. Rioseco, et al, v. GAMCO Asset Management, Inc.*, No. 09 Civ. 9396 (CS);

WHEREAS by letter dated August 6, 2010, removing defendants requested a conference on their anticipated motion to dismiss;

WHEREAS the Court granted this request, and set a conference date for September 24, 2010;

WHEREAS on or about September 3, 2010, plaintiffs filed a motion for remand to state court;

WHEREAS the removing defendants provided written consent to removal within 30 days of service of the complaint;

WHEREAS defendant GAMCO Asset Management, Inc. did not provide written consent to removal within 30 days of service of the complaint;

IT IS HEREBY STIPULATED AND AGREED that based on the above:

1. Removing defendants consent to remand to state court;

2. Plaintiffs agree to withdraw with prejudice their request for costs and fees as to removing defendants, and agree that plaintiffs or related entities will not initiate further litigation against removing defendants or related entities in federal court.

Dated: White Plains, NY
September 20, 2010

BY: 

Peter D. St. Phillip, Jr. (PS-0726)
LOWEY DANNENBERG COHEN &
HART, P.C.
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Dated: Purchase, NY
September 20, 2010

BY: 

Joseph A. Sack (JS-3758)
THE SACK LAW FIRM PLLC
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INC., CAROL A. GABELLI, INC., DANIEL
L. LOFRESE, INC., MANHATTAN
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The case is hereby remanded.
SO ORDERED this 20th day of September, 2010


Hon. Cathy Seibel, U.S.D.J.

The Clerk shall close the case.

THE
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September 20, 2010

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Hon. Cathy Seibel
United States District Court, S.D.N.Y.
300 Quarropas Street
White Plains, NY 10601

Re: George L. Rioseco, et al v. John Gabelli, Inc., et al
No. 10 civ. 05871 (CS)

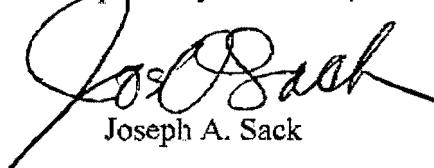
Dear Judge Seibel:

As you know, we represent in the above matter defendants JOHN GABELLI, INC., ROBIN PREVER, INC., CAROL A. GABELLI, INC., DANIEL L. LOFRESE, INC., MANHATTAN PARTNERS II, L.P., and S.W.A.N. PARTNERS, L.P., (together the "removing defendants").

Attached please find a "Stipulation and [Proposed] Order," executed by counsel for plaintiffs and removing defendants. If the Court is inclined to "So Order" the Stipulation, we respectfully submit that the conference currently scheduled before Your Honor for Friday, September 24, 2010, need not go forward.

Thank you for your consideration.

Respectfully submitted,



Joseph A. Sack

Cc: Peter D. St. Phillip, Jr., Esq. (by e-mail)
Counsel for plaintiffs

Judith L. Mogul, Esq. (by e-mail)
Counsel for defendant GAMCO Asset Management, Inc.